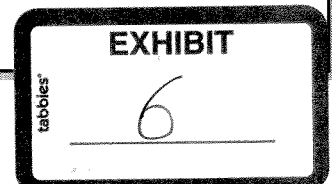


IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) No. 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

THE VIDEOTAPED DEPOSITION OF ED
FITE, produced as a witness on behalf of the
Defendants, in the above styled and numbered cause,
taken on the 6th day of April 2009, in the City of
Tulsa, County of Tulsa, State of Oklahoma, before me,
Marlene Percefull, Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the State
of Oklahoma.

TULSA FREELANCE REPORTERS
918-587-2878



1 scheduled for September and I want to avoid as much as 11:10AM
2 possible any surprises about what your testimony may be
3 so I'm going to ask you about some particular topics
4 and then I have a few documents that I want to run
5 through and try to get some context on. So you 11:11AM
6 understand you're here to give a deposition because
7 there has been a lawsuit filed by the State of
8 Oklahoma?

9 A Yes, sir.

10 Q Was that lawsuit your idea? 11:11AM

11 A No, sir.

12 Q To your knowledge, did the Oklahoma Scenic Rivers
13 Commission request the filing of this lawsuit?

14 A No, sir.

15 Q Mr. Fite, did you see a copy of the complaint in 11:11AM
16 this lawsuit before it was filed in July of 2005?

17 A No, sir.

18 Q Now, Mr. Elrod took you through a series of
19 questions around, for lack of a better word, different
20 sources that might have an impact on water quality that 11:11AM
21 exists in the Illinois watershed. I want to go back.
22 Let me ask you a threshold question first. Mr. Fite,
23 do you believe that all significant sources of either
24 phosphorous or bacteria in the Illinois River Watershed
25 should be regulated to minimize the water quality 11:12AM

1 impact of those sources?

11:12AM

2 MR. RIGGS: Object to the form.

3 A Restate that for me, please.

4 Q Sure. And it's really just your preference.

5 Would you prefer to see all significant sources of

11:12AM

6 phosphorous or bacteria that operate on the Illinois

7 River Watershed be regulated in such a way as to

8 minimize the impact of those sources on water quality?

9 MR. RIGGS: Object to the form.

10 A Yes.

11:12AM

11 Q Okay. We've talked about cattle. Are cattle

12 regulated in the Illinois River Watershed?

13 MR. RIGGS: Object to the form.

14 A From an environmental standpoint under the Clean

15 Water Act, no.

11:12AM

16 Q Are you aware of any Oklahoma state programs other

17 than the sort of incentive-based conservation practice

18 we talked about earlier in which the State of Oklahoma

19 has imposed mandatory regulations, environmental

20 regulations on cattle operations in the watershed?

11:13AM

21 MR. RIGGS: Object to the form.

22 A That question needs to be referred to the

23 Department of Ag.

24 Q Okay.

25 A Dan Parrish. I don't think I could answer the

11:13AM

1 question.

11:13AM

2 Q Okay. The question was and I'm not trying to
3 argue with you was whether you are aware of any
4 programs. Not -- there may be some that exist that
5 you're not aware of?

11:13AM

6 MR. RIGGS: Object to the form.

7 A Concentrated animal feeding operations are
8 regulated.

9 Q Right.

10 A And I'm not familiar with the threshold currently 11:13AM
11 for cattle.

12 Q Okay. What about grazing cattle? Are you aware
13 of any Oklahoma state regulatory programs that impose
14 mandatory obligations on grazing cattle in the Illinois
15 River Watershed from an environmental standpoint? 11:13AM

16 MR. RIGGS: Object to the form.

17 A There are farm plans that are written by the
18 conservation districts by NRCS for prescribed grazing,
19 but as far as a regulatory reg, the regulation would be
20 if it's tied to a cost incentive program or something 11:14AM
21 like that that the landowner is benefited from would be
22 my best knowledge of that.

23 Q Okay. You and Mr. Elrod talked a little bit about
24 a stream bank erosion. Do you agree that stream bank
25 erosion along the corridor of the Illinois River and 11:14AM

1 its tributaries is a significant source of water 11:14AM
2 quality impairments?

3 MR. RIGGS: Object to the form.

4 A Yes.

5 Q Okay. And with respect to regulation of the 11:14AM
6 private landowners of those stream banks, Mr. Fite, are
7 you aware of any mandatory environmental programs that
8 have been enacted by the State of Oklahoma that either
9 require or prohibit certain activities by riparian
10 owners? 11:15AM

11 A Yes.

12 Q Tell me what you're aware of.

13 A Building in the floodplain, have a floodplain
14 permit. Location of an on-site treatment works for a
15 residence or a business, such as a septic tank or some 11:15AM
16 other type of processes that deal with wastewater
17 generated in that facility or facilities.

18 Q Mr. Fite, are you aware of any Oklahoma
19 environmental regulations or programs that would
20 prohibit riparian landowners from clearing their 11:15AM
21 property all the way down to the stream bank?

22 A Yes, under -- you can't convert more than one acre
23 of land without a storm water permit and notice of
24 intent with the Department of Environmental Quality.
25 If it's agriculturally related, then you have to work 11:16AM

1 the use of their animals? 11:17AM

2 A When we've had knowledge at the Scenic River
3 Commission level last ten to 15 years, we generally as
4 a rule of thumb, whether it's agricultural-related
5 clearing or for residential purposes or esthetic 11:17AM
6 purposes, we automatically contact the Army Corps of
7 Engineers, DEQ are generally on site before that work
8 goes underway, it's underway.

9 Q You indicated earlier that you have used
10 commercial fertilizer on your property on occasion, is 11:17AM
11 that right?

12 A Twice.

13 Q Are you aware from your personal and professional
14 involvement in the Illinois River Watershed that other
15 landowners in the watershed make use of commercial 11:18AM
16 fertilizer?

17 A Yes.

18 Q And are you aware, Mr. Fite, that there are
19 environmental concerns, including nutrient runoff, that
20 have been recognized with respect to commercial 11:18AM
21 fertilizer use?

22 A Yes.

23 Q Is commercial fertilizer use in the Illinois
24 Watershed regulated under any mandatory program by the
25 State of Oklahoma? 11:18AM

1 A I don't have knowledge of this. I know in my 11:18AM
2 application I restricted my use to soil sampling and a
3 mixture of fertilization that's about half rate of what
4 the soil sample.

5 Q Okay. You are aware, are you not, Mr. Fite, that 11:18AM
6 the poultry industry is regulated on both sides of the
7 state line in terms of the use of poultry litter in the
8 Illinois River Watershed?

9 MR. RIGGS: Object to the form.

10 A I'm familiar with statutes and some regulations, 11:19AM
11 not comprehensive.

12 Q Okay. Mr. Fite, can you identify for me any
13 farmer under contract with Tyson Foods that you have
14 personal knowledge that he or she has violated the
15 state laws or regulations governing the use of poultry 11:19AM
16 litter?

17 A Presently there are none. Most of the operators,
18 the growers that I know, are no longer in business.

19 Q So I can assume then, Mr. Fite, that when this
20 case goes to trial in September that you're not going 11:19AM
21 to take the stand and identify a particular farmer
22 under contract with Tyson Foods who you know has
23 violated the law in terms of use of poultry litter?

24 MR. RIGGS: Object to the form.

25 Q Is that fair? 11:20AM

11:20AM

1 A Yes.

2 Q Okay. And if I ask that same question for the
3 other companies integrators that are named in this
4 lawsuit, would the answer be the same?

5 MR. RIGGS: Object to form.

11:20AM

6 A No.

7 Q Okay.

8 MR. TUCKER: I'm sorry. What was the answer?

9 A No.

10 Q Okay. Is there a particular -- well, tell me why 11:20AM
11 the answer would not be the same for all other
12 companies?

13 A There was one integrator that was bringing liquid
14 waste into Oklahoma on honey wagons, honey trucks.

15 This has been more than fifteen years ago. Landowner 11:20AM
16 involved is Dean Wilma, he's deceased now, but they
17 were land applying concentrations so heavily that it
18 was making its way into the river and I filed a
19 complaint.

20 Q And who was the integrator involved?

11:20AM

21 A George's.

22 Q And you said that was approximately how long ago?

23 A It's been 15 years ago anyway.

24 Q And when you say you filed a complaint, you filed
25 a complaint with who?

11:20AM

1 A I had the conservation district and the State 11:20AM
2 Department of Ag come out on site.

3 Q And was the problem addressed?

4 A Yes.

5 Q Addressed to your satisfaction? 11:21AM

6 A Yes.

7 Q Okay. With that one exception then, are you -- do
8 you have personal knowledge, Mr. Fite, of any other
9 violations by farmers who contract with any of the
10 integrators named as defendants in this lawsuit? 11:21AM

11 A That's the only complaint that I've been
12 personally involved in.

13 Q Now, I understand from some documents that have
14 been produced in this case that some of the experts
15 retained by Mr. Edmondson's office for this lawsuit 11:21AM
16 have been to your cattle farm and conducted some
17 sampling, is that right?

18 A Yes.

19 Q Could you tell me on how many occasions sampling
20 has occurred related to this lawsuit at your property? 11:21AM

21 A I think they have been on site twice.

22 Q Okay.

23 A Maybe three times.

24 Q Okay. And from your discussions with Mr. Elrod
25 earlier, I gather that you have two separate parcels of 11:22AM

1 A That's okay. I've got to be honest. 11:33AM

2 Q Mr. Fite, in your conversation with Mr. Elrod, the
3 topic of reports of individuals recreating on the river
4 perhaps having some gastroenteritis came up. Do you
5 recall that line of questioning? 11:33AM

6 A Mm-hmm.

7 Q And this is another one of those questions
8 designed to avoid surprise at trial.

9 Mr. Fite, are you in a position of your
10 own personal knowledge to identify any person who 11:33AM
11 has recreated on the Illinois River Watershed who
12 has sustained a bacteria-related illness from water
13 exposure as opposed to, I think you gave an example
14 of a sandwich, a tuna salad sandwich that had gone
15 bad? 11:33AM

16 A Yeah.

17 Q Are you in a position to identify someone who you
18 know got sick from exposure to bacteria in the water?

19 A No.

20 Q Now, prior to this lawsuit being filed, Mr. Fite, 11:34AM
21 did the Scenic Rivers Commission regularly engage in
22 any sampling or monitoring of bacteria?

23 A Yes.

24 Q Okay. And was that in conjunction with U.S.G.S.?

25 A U.S.G.S. 11:34AM